

Accessibility Disputes

A property owner must maintain compliance with all appropriate regulations regarding accessibility. When a property inspection is conducted by DCA and findings of non-compliance are made, a property owner must demonstrate that the specific findings of non-compliance have been adequately addressed or formally dispute them. When assessing the owner's response to physical non-compliance findings, the property program requirements, (i.e. Tax Credit and/or HOME funding) must be considered.

Cures for Accessibility Findings

For Tax Credits properties without DCA HOME funds, the owner is responsible for following all guidelines related to accessibility. Physical inspection findings related to accessibility are not reported on IRS form 8823 unless the state agency receives notification of a violation of the Fair Housing Act from HUD or the DOJ. Regardless, they must be addressed by a property owner. If sufficient documentation is not submitted to DCA to cure or adequately dispute the accessibility finding(s), the status of the property inspection will reflect an open accessibility issue. It is the owner's responsibility to report correction of open accessibility findings listed in the property inspection report. An open accessibility issue will remain an audit finding until it is documented as being corrected by the owner. Unaddressed, audit findings of this nature also have the potential to adversely impact an owner's compliance scoring in a competitive tax credit funding round.

Properties with DCA HOME loans (federal funds) also must cure accessibility findings that are not successfully disputed. Undisputed, unresolved accessibility findings in a property with HOME funds will result in the audit remaining open until sufficient documentation has been received to close the accessibility finding. Once all cure documents are reviewed and accepted, the owner will receive an updated property report showing all findings have been addressed and that the property audit is closed.

Dispute Process for Properties

If the owner of a property disputes an accessibility non-compliance finding in the physical inspections report, the cure response must include a report from a Qualified Accessibility Consultant with an explanation detailing the reason for the dispute and reference to any guidance that supports the dispute for DCA review. The owner may use a DCA Qualified Accessibility Consultant or other Qualified Independent Consultant of its choosing. If the owner employs a Consultant that has not been qualified by DCA, the Accessibility Consultant must include its qualifications for approval with the report that supports the owner's dispute.

DCA's qualification requirements can be found at the link below in the 2015 RFQ (Exhibit C).

http://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/A_HFDMMain/ProcureContract/2015RFQForAccessibilityConsultingSvcs.pdf

A list of DCA Qualified Independent Consultants and the qualification requirements can be found in the link below:

http://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/A_HFDMMain/ConstructionSvcs/Other/QualifiedAccessibilityConsultants031716.pdf

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If the owner's dispute of the accessibility finding is accepted, the property audit report will be closed showing that all findings have been cured. If the owner does not provide sufficient documentation to support the disputed accessibility finding, the property accessibility findings in the audit report will remain open until sufficient documentation is provided and accepted.

Unacceptable owner dispute responses to accessibility findings include:

1. Failure to include an opinion from a Qualified Accessibility Consultant;
2. Report or explanation from an unaccredited employee or Consultant with an identity of interest with the property;
3. Incomplete response(s); and/or,
4. Responses which fail to state that the project meets all accessibility requirements or does not include sufficient supporting documentation.

Extension Requests

The owner of a property with HOME funds may request an extension of the deadline to correct open accessibility findings. The request must include an explanation of the reason for the request, including any action taken, a formal bid or scope of work or a signed contract, and a detailed plan to cure the accessibility finding(s) with the estimated timeline for completion. If the owner requests an extension to cure accessibility findings, and the cures have been received and accepted for all other physical findings, the audit report will remain open with open accessibility until sufficient documentation has been received to close the accessibility finding(s).

For properties without DCA HOME funds, the owner is responsible for following all guidelines related to accessibility. The owner may request an extension to correct accessibility findings. Once the accessibility corrections are made, it is the owner's responsibility to inform DCA that this finding has been addressed. This will allow the property inspection to reflect that it has been closed with a closed accessibility finding. The owner is required to respond to all open accessibility findings.

Once sufficient cure documents for all non-compliance findings have been reviewed and accepted, DCA will provide an updated property report showing all findings are cured and that the property audit is closed.

Conclusion

Property owners under the Tax Credit and HOME funding programs are expected to maintain full compliance with all accessibility laws and regulations. Audit findings made by DCA must be promptly addressed in the manner set forth herein. In doing so, however, it should be noted that any DCA decision concerning accessibility is subject to review by the DOJ and/or HUD. These federal agencies are under no obligation to regard DCA's accessibility decisions as conclusive proof of compliance. Any concerns by a property owner whether full compliance with accessibility laws and regulations has been achieved are best resolved by retaining the services of a Qualified Accessibility Consultant.

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